

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT NEW YORK

COPIES MAILED  
on 7/30/98  
MARIA CANDELARIA

-----X  
TOMMY HERRIN,

Petitioner,

CV 97-2142 (RJD)

-against-

MEMORANDUM & ORDER

JAMES STINSON, Supt.,

Respondent.  
-----X

DEARIE, District Judge.

Pro se petitioner Tommy Herrin has been a prisoner in state custody since he was convicted of assault in the first degree, two counts of robbery in the first degree, and two counts of robbery in the second degree. His conviction became final in 1993 when the New York Court of Appeals denied him leave to appeal a judgment of the Appellate Division affirming his conviction. People v. Herrin, 81 N.Y.2d 887 (March 8, 1993).


On or before April 16, 1997, Herrin filed a petition in this Court for a writ of *habeas corpus*. On August 29, 1997, respondent moved to dismiss the petition for failure to comply with the statute of limitations set forth by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

On April 24, 1996 the AEDPA went into effect, requiring that a *habeas corpus* petition be filed within one year of the date the petitioner's conviction became final. 28 U.S.C. § 2244(d)(1)(A). In Ross v. Artuz the Second Circuit held that petitioners whose convictions became final *before* April 24, 1996 had until April 24, 1997 to file their petitions, as they were entitled to a one-year grace period starting from the statute's effective date. Ross v. Artuz, No. 97-2789 (2d Cir. June 24, 1998).

Because a prisoner has limited control over when his petition reaches the court, the petition is deemed filed when the petitioner turns it over to prison officials. See Houston v. Lack, 487 U.S. 266 (1988). Herrin's petition was dated April 4, 1997 and postmarked April 16<sup>th</sup> in Elmira, NY. Hence, Herrin filed his petition in the time period between April 4<sup>th</sup> and April 16, 1997, clearly before the statute of limitations had run. Accordingly, respondent's motion to dismiss is denied. Respondent is directed to file a response to the petition within thirty days.

SO ORDERED.

Dated: Brooklyn, New York  
July 30, 1998

  
RAYMOND J. DEARIE  
United States District Judge